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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,314	06/25/2003	Carl R. Vanderschuit	9053-000028US	3195

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EXAMINER

SAWHNEY, HARGOBIND S

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/606,314	Applicant(s) VANDERSCHUIT, CARL R.	
	Examiner Hargobind S. Sawhney	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-23, 25-36 and 38 is/are rejected.
- 7) ☒ Claim(s) 11, 24 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The response filed on January 25, 2003 been entered.
2. The terminal disclaimer filed on January 24, 2005 has been entered. Accordingly, the double patenting rejections of claims 1-38 have been withdrawn.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-4, 7, 8, 10 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Hanley (US Patent No.: 6,733,150 B1).

Regarding claims 1-4, 7, 8, 10 and 12, Hanley ('150 B1) discloses a lighted headwear 10 (Figure 1) comprising:

- a bill 108 extending from a crown 101, and a light source 130 positioned within the bill 108 (Figure 1, column 3, lines 25-29 and 45-47);
- the light source 130 directing light through a portion of the bill 108 (Figure 1, column 3, lines 25-29, 45-47 and 52-54);

- the light source 130 further including a transmissive portion 234 - a lens – defining at least a portion of an edge of the bill 108; the transmissive portion 234 receiving and focus light emitted by a light source 130 (Figures 1, 2 and 5, column 4, lines 39-51 and column 5, lines 54-56);
- the light source 130 including a plurality of light –emitting elements (Figure 1, column 3, lines 45-47);
- a controller 166 controlling operation of the light source 130 (Figure 1, column 3, lines 50 and 51);
- the light source 130 including a plurality of light emitting diodes –LEDs- (Figure 1, column 3, lines 52-55);

5. Claims 1-6, 16-21, 23, 28-34 and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Marston (US Patent Application Pub. No.: 2003/0151910 A1) hereinafter referred as Marston.

Regarding claims 1-6 and 16-21, 23, 28-34 and 36; Marston discloses a lighted headwear 10 (Figure 2) comprising:

- a bill 12 extending from a crown 14, and a light source 16 positioned within the bill 12 (Figure 2, Para. 0017 and Para.0018);
- the light source 16 directing light through a portion of the bill 12 (Figure 2, Para. 0017 and Para.0018);
- transmissive portions 18 defining at least a portion of the edge of the bill 12; the transmissive portion 18 receiving and directing light emitted by a light source 16 (Figure 2, Para. 0017 and Para.0018); and

- the light transmissive portions 18 including indicia – peripheral arrangement of two parallel lined of the light- transmissive portions – highlighted by the light from the light source 16 (Figure 2 and Para. 0008);
- the light –transmissive portions 18 defining an upper portion of the bill 12 (Figure 2, Para. 0018), and the light source 16 directing light through the light transmissive portion 18 (Figure 2, Para. 0018);
- the light source 16 including a plurality of light emitting elements 18 (Figure 2, Para. 0018);
- a controller 22 controlling the operation of the light source 16 (Figure 2, Para. 0022);
- the controller 22 including at least one light switching device operationally connected to the light source (Figure 2, Para. 0022), and the swichable device 22 coupled the switch – included in the controller 22 – operable with external pressure upon an externally flexible surface portion (Figure 2, Para. 0022);
- the plurality of light emitting elements 18 of the source 16 being light emitting diodes LEDs (Figure 2, Para. 0018);

6. Claims 1, 16 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Kates (US Patent No.: 6,499,142 B1).

Regarding claims 1, 16 and 28; Kates ('142 B1) discloses a lighted headwear 10 (Figure 1) comprising:

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- a bill 12 extending from a crown 11 and a light source 16 – photo luminescent material - positioned within the bill 12 (Figure 1, column 2, lines 50-52 and 64-66); and
- the light source 16 directing light through a light transmissive portion of the bill 12 (Figure 1, column 2, lines 50-52 and 64-66).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanley (US Patent No.: 6,733,150 B1).

Hanley ('150 B1) discloses a lighted headwear 10 (Figure 1) comprising:

- a bill 108 extending from a crown 101, and a light source 130 positioned within the bill 108 (Figure 1, column 3, lines 25-29 and 45-47);
- the light source 130 directing light through a portion of the bill 108 (Figure 1, column 3, lines 25-29, 45-47 and 52-54); and
- a controller 166 – a switching device - controlling operation of the light source 130 (Figure 1, column 3, lines 50 and 51) positioned underneath the outer cover of the crown 101 (Figure 1);

However, in the embodiment detailed above, Hanley ('150 B1) does not teach at least one light-switching device positioned underneath an externally flexible surface portion of the bill of the lighted hat.

On the other hand, Hanley ('150 B1) discloses another embodiment of a headwear including a bill 1400 (Figure 14) comprising:

- an externally flexible surface portion 1414 receiving a switching device 1466 underneath it (Figure 14, column 11, lines 1-4);
- the switching device 1466 switchably connected to the light source 1430 (Figure 14, column 10, line 55).
- Operation of the light source requiring external pressure on the flexible external surface portion of the bill 1400 (Figure 14, column 11, lines 1-4).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the hat by Hanley ('150 B1) by providing the a switchable device positioned underneath a flexible portion of the bill as taught by Hanley through his another embodiment of the headwear, since it has been held that rearranging parts of an invention involves only routine skill in the art. In addition, relocation of the switch on the bill would make the switch easily accessible while maintaining the aesthetic outward appearance of the device.

9. Claims 13, 25 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kates (US Patent No.: 6,499,142 B1) in view of DeMars (US Patent No.: 5,323,492).

Regarding each of the claims 13, 25 and 38, dependent on claims 1, 16 and 28 respectively; Kates ('142 B1) discloses a lighted headwear 10 (Figure 1) comprising:

- a bill 12 extending from a crown 11 and a light source 16 – photo luminescent material - positioned within the bill 12 (Figure 1, column 2, lines 50-52 and 64-66); and
- the light source 16 directing light through a light transmissive portion of the bill 12 (Figure 1, column 2, lines 50-52 and 64-66).

However, Kates ('142 B1) does not teach the light source including a chemiluminescent material.

On the other hand, DeMars ('492) discloses an illuminated headwear 10 including a chemiluminescent material 36 positioned adjacent edges of ears 24 attached to a head attachment 12 (Figure 1, column 2, lines 59-62 and column 3, lines 2,3 and 37-46).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the headwear of Kates ('142 B1) by providing a chemiluminescent material as taught by DeMars ('492) for benefit and advantage improving ornamental value of the cap by using the light source not depending of the any other light source including daylight of illumination operating on an electrical power source.

10. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanley (US Patent No.: 6,733,150 B1) in view of Baker (US Patent No.: 6,088,837).

Regarding Claim 14, Hanley ('150 B1) discloses a hat with a bill 108 (Figure 1, column 3, lines 25-29) including at least one light source 130. However, Hanley ('150 B1) does not teach the bill allowing adjustment of the direction of light emitted by the light source.

On the other hand, Baker ('837) discloses a hat including a bill 14 (Figures 1-3) having its portion 18 being pivotable, and thus adjustable, relative to the bill 14 (Figures 1-3, column 2, lines 41-46).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to further modify the hat Hanley ('150 B1) by providing the pivotable bill as taught by Baker ('837) for the benefits of adjustment of the light source for focused light flux.

Regarding Claim 15, Hanley ('150 B1) in view of Baker ('837) discloses the lighted hat including a flexible bill 14 pivoted relative to the bill 14 (Figures 1-3, column 2, lines 41-46) (Baker, Figures 1-3), and the bill allowing adjustment of the light source 130 (Hanley, Figure 1).

11. Claims 22 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marston (US Patent Application Pub. No.: 2003/0151910 A1) hereinafter referred as Marston.

Regarding claims 22 and 35, dependent on claims 16 and 28 respectively; Marston discloses a lighted headwear 10 (Figure 2) comprising:

- a bill 12 extending from a crown 14, and a light source 16 positioned within the bill 12 (Figure 2, Para. 0017 and Para.0018);

- the light source 16 directing light through a portion of the bill 12 (Figure 2, Para. 0017 and Para.0018);
- a controller 22 controlling the operation of the light source 16 (Figure 2, Para. 0022);
- the controller 22 including at least one light switching device operationally connected to the light source (Figure 2, Para. 0022), and the switchable device 22 coupled the switch – included in the controller 22 – operable with external pressure upon an externally flexible surface portion of the crown of the lighted headwear (Figure 2, Para. 0022);

However, in the embodiment detailed above, Marston does not teach at least one light-switching device positioned underneath an externally flexible surface portion of the bill of the lighted hat.

It would be have been obvious to one of ordinary skill in the art at the time of the invention to modify the hat by Marston by providing the a switchable device positioned underneath a flexible portion of the bill, since it has been held that rearranging parts of an invention involves only routine skill in the art. In addition, relocation of the switch on the bill would make the switch easily accessible while maintaining the aesthetic outward appearance of the device.

12. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marston (US Patent Application Pub. No.: 2003/0151910 A1) hereinafter referred as Marston in view of Baker (US Patent No.: 6,088,837).

Regarding Claim 26, Marston discloses a lighted headwear 10 (Figure 2) comprising:

- a bill 12 extending from a crown 14, and a light source 16 positioned within the bill 12 (Figure 2, Para. 0017 and Para.0018);
- the light source 16 directing light through a portion of the bill 12 (Figure 2, Para. 0017 and Para.0018).

However, Marston does not teach the bill allowing adjustment of the direction of light emitted by the light source.

On the other hand, Baker ('837) discloses a hat including a bill 14 (Figures 1-3) having its portion 18 being pivotable, and thus adjustable, relative to the bill 14 (Figures 1-3, column 2, lines 41-46).

It would be have been obvious to one of ordinary skill in the art at the time of the invention to further modify the hat Marston by providing the pivotable bill as taught by Baker ('837) for the benefits of adjustment of the light source for focused light flux needed to illuminate the desired location.

Regarding Claim 27, Marston in view of Baker ('837) discloses the lighted hat including a flexible bill 14 pivoted relative to the bill 14 (Baker, Figures 1-3, column 2, lines 41-46) (Baker, Figures 1-3), and the bill allowing adjustment of the light source 130 (Hanley, Figure 1).

Allowable Subject Matter

13. Claims 11, 24 and 37 are objected to as being dependent upon a rejected base

claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record, including Hanley (US Patent No.: 6,733,150 B1) and Marston (US Patent Application Pub. No.: 2003/0151910 A1), does not show or suggest the applicant's invention as claimed. Specifically, the prior art of record does not disclose a lighted headwear combining:

- at least one black-light LED directing light through a black-light responsive portion of a bill of a lighted headwear as recited in claims 11, 24 and 37.

The above-indicated combination, including a lighted headwear comprising a bill with a black-light responsive portion, is unique invention.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hargobind S Sawhney whose telephone number is 571 272 2380. The examiner can normally be reached on 6:15 - 2:45.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571 272 2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HSS

3/8/2005


Stephen Husar
Primary Examiner